the applicant's claim is well founded'. It is therefore necessary for the applicant's case be properly proved.

The question is whether the applicant's case can be properly proved by an affidavit filed by someone other than the plaintiff or at least by someone who can have no personal knowledge of the facts and matters deposed to and who can only make the 'affidavit verifying the facts on which the action is based' on information and belief.

It should be noted that under the English procedure it is permissible for the affidavit verifying the facts on which the action is based to contain statements of information or belief, for the English O 75 r 32(7) provides: 'Unless the Court otherwise directs, an affidavit for the purposes of rule 19(4), 21 or 38(2) may, except in so far as it relates to the service of a writ, contain statements of information or belief with the source and grounds thereof'. I would emphasize the words 'Unless the Court otherwise directs'.

There is no equivalent to the English O 75 r 32(7) in the Rules of the Supreme Court 1970. The omission is I think deliberate. It has been pointed out to me that certain of the rules in the English O 75 have been reproduced in O 70 of the Rules of the Supreme Court 1970. For example the English O 75 r 30 is reproduced in O 70 r 29 of the Rules of the Supreme Court 1970; O 75 r 32(2) in O 70 r 30 and O 75 r 33 in O 70 r 31.

Be that as it may, O 41 r 5(1) and (2) of the Rules of the Supreme Court 1970 require that an affidavit may contain only such facts as the deponent is able of his own knowledge to prove, unless the affidavit is sworn for the purpose of being used in interlocutory proceedings. The only exceptions are applications filed for summary judgment under O 14 of the Rules of the Supreme Court and when ordered by the court.

A judgment entered in default of appearance under O 70 r 20(3) is a final judgment. It is not by any means an interlocutory proceeding or judgment. For the purposes of O 42 r 5(2) only those applications which do not decide the rights of the parties can be considered to be interlocutory. See *Rossage* v *Rossage*[14] and *Re J (an infant)*.[15]

An application to enter judgment in default of appearance under O 70 r 20(3) is intended to decide the rights of the parties and accordingly is not an interlocutory proceeding.

The rules of court must be strictly observed. They have not been in this case. It cannot be said that the plaintiffs have properly proved their case. The court has a discretion to set aside a judgment entered under this rule. See O 70 r 20(9) of the Rules of the Supreme Court. Having regard to all the circumstances of this case and being satisfied that the defendants have shown on affidavit that they have a good arguable case I would set aside the judgment entered in these proceedings on this ground as well.

The defendants are entitled to the costs of this application and I direct that they be taxed and paid.

Application allowed.

Solicitors: *Haridass Ho & Partners*; *Drew & Napier.*

Reported by *David Chong Gek Sian*

Ting Peng Yew v Singapore Envelopes Co Pte Ltd

HIGH COURT (SINGAPORE) — SUIT NO 2529 OF 1986
GOH JOON SENG J
7 JANUARY 1991

Copyright — Infringement — Unauthorized reproduction of artwork — Value of artwork — Claim for loss of licence fee

The plaintiff, an artist, claimed damages for infringement of copyright and loss of licence fee when the defendant distributed 350 table calendars containing unauthorized reproductions of the plaintiff's artworks. Interlocutory judgment was granted and damages in respect of licence fee were assessed at $62,385 based on one and a half times the $41,590 assessed value of the artworks. The defendant appealed against the assessment of damages. The plaintiff also cross-appealed against the assessed value of the artworks, and also claimed a licence fee at twice the value of the artworks.

Held, allowing the defendant's appeal and dismissing the plaintiff's cross-appeals:

(1) The plaintiff's assessment of the value of the artworks was based on prices offered for sale in Australia. However, none of the artworks were sold in Australia, and in fact were sold in Singapore at prices well below the posted prices. Based on the actual sales of some of the artworks in Singapore and on the plaintiff's own comparative pricing, the value of the 12 artworks was assessed at $15,000.

(2) As to the plaintiff's claim for damages at twice the value of the artworks, bearing in mind that only 350 copies of calendars were involved, a licence fee of one and a half times the value is more than reasonable. There is no reason why the rate should be any different due to the different artform.

(3) The defendant's appeal is allowed and the sum of $22,500 is awarded to the plaintiff by way of loss of licence fee, with interest at 6% per annum from the date of the filing of the writ. The plaintiff's cross-appeals are dismissed and the defendant is awarded costs of the appeal.

Lok Vi Ming for the plaintiff.
Tan Hin Tat for the defendant.

Cur Adv Vult

Goh Joon Seng J: The plaintiff is an artist and is the author of 12 pieces of artistic metal sculpture known as 'metalsculp'.

The defendant is a company dealing in envelopes. They received 350 pieces of table calendars for the year 1986 which contained reproductions of the plaintiff's said works. The calendars were distributed free by the defendant to its customers.

When the unauthorized reproductions came to the knowledge of the plaintiff, the plaintiff commenced proceedings on 27 March 1986 claiming damages and loss. For loss of licence fee, the plaintiff claimed a sum of $124,180 being twice the price at which the metal-sculps in question were offered for sale (but none was sold) at an exhibition in Australia. Interlocutory judgment was entered against the defendant by the registrar on 9 January 1987. The defendant's appeal against the said interlocutory judgment was dismissed by Mr Justice Lai Kew Chai in chambers on 6 August 1987. The learned judge ordered, inter alia, 'that the defendant do pay to the plaintiff damages to be assessed by the registrar for infringement of the plaintiff's copyrights in all the 12 artistic works'. The claim then came before the registrar for assessment. On 11 March 1989, the learned registrar assessed damages in respect of licence fee at $62,385 and interest at 6% per annum from 27 March 1986. The defendant thereupon appealed on 13 March 1989 against the said assessment. The plaintiff cross-appealed against the assessment of the value of the works at $41,590 and also contended that the award based on one and a half times thereof was low. He further appealed against the refusal of the learned registrar to make any award for injury to the reputation of the plaintiff.

In the statement of claim, the respective prices of the artistic works infringed are listed as follows:

	Artwork	Price
(1)	Vision	$ 4,200
(2)	Chinese Heritage II (Geomancy)	5,250
(3)	The Force	1,800
(4)	Waves II	1,020
(5)	Moonlight	25,000
(6)	Nirvana	1,600
(7)	Life's Harvest	6,000
(8)	Kelong II	2,640
(9)	Chinese Heritage I (the 8 trigram)	5,250
(10)	Horizon	3,750
(11)	Time Zone	4,200
(12)	Summer	2,700
	Total:	$62,090

These prices were based on the prices offered for the sale of these artworks (except for Nirvana and Moonlight) at an exhibition in Australia converted at an exchange rate of A$1 to S$1.50. As stated earlier none of these artworks, the subject matter of the infringement, was sold at the exhibition in Perth, Australia in November 1985. Many were however sold in Singapore at prices well below that of the prices posted at the exhibition. I append below the actual prices at which a number of these works were sold by the plaintiff by way of replicas and prints at or close to the time of the infringement.

For replicas:

	Artwork	Price at which it was sold
(1)	The Force	$1,440 (see PB14)
(2)	Waves II	$660 (see PYT3 & N/E page 24)
(3)	Nirvana	$1,600 less 30% (see PB15)
(4)	Kelong II	$1,800 less 30% (see PB15)
(5)	Chinese Heritage I (The 8 trigram)	$1,190 (see PYT7. Sold as original)
(6)	Summer	$1,050 (see PYT7. Sold as original)

For prints:

	Artwork	Price at which it was sold
(1)	Vision	50 pieces were sold for $15 each and 1 piece sold for $55 (see PYT8)
(2)	Moonlight	50 pieces at $11 per piece (see PYT8)
(3)	Life's Harvest	1 piece at $120 complete with frame and 50 pieces at $15 per piece without frame (see PYT8)
(4)	Time Zone	50 pieces at $15 each (see PTY8)

On the 'Moonlight' for which no price had been posted at the Australian exhibition as the same was stated to be 'not for sale', the plaintiff values it at $25,000. Up to the time of the appeal before me, there is no evidence that it had been sold. This was the plaintiff's first piece of work in 1978 (see p 4 of the notes of evidence). In my view this valuation at $25,000 reflects more the sentimental value attached to it by the plaintiff rather than its intrinsic value to a buyer. On 'Horizon' there is also no evidence of actual sale. On 'Chinese Heritage II (Geomancy)' there is no evidence of sale. It was valued by the plaintiff at $5,250, that is at the same price as 'Chinese Heritage I' which was sold for only $1,190.

Based on the actual sales of some of the artworks in Singapore listed above and on the plaintiff's own comparative pricing, I assess the value of the 12 artworks at $15,000.

The plaintiff is claiming for loss of licence fee at twice the value of the artworks infringed. The plaintiff has offered to grant licences to use his artworks at one and a half times the price of the works. See PB21 at which he agreed to a licence for $1,275 for a painting priced at $850. The same rate of one and a half times

also appeared in PB22 in which he offered a licence fee of $12,900 for six pieces of water colour paintings priced for a total of $8,600. The reason for the plaintiff's claim for licence fee at twice the price appears at pp 4-5 of the notes of evidence:

> Quotation of $2.75 per copy as royalty and requested for S$1.275 per image for copyright fees.
>
> Second proposal. Painting cost $850 per piece.
>
> In proposal 1, I asked for $1,275 per image and that the value of artwork was $850. Therefore licence fee is only one and half times in 1985.
>
> The reason why I am asking for double the value now is because this is a water-colour painting but the art-form in the calendars are of a different kind, ie made of copper and metal.
>
> Refer to p 21 PB.
>
> The reason why there is no maximum limit if the original is purchased which something which I cannot remember.
>
> Refer to p 20 PB.
>
> I am asking for royalty of $2.75 per copy. The calendars referred to are table calendars.
>
> Refer to p 22 PB.
>
> Bon Voyage's letter to Art Offices dated 3 January 1986. We were approached by Art Offices for a quotation.
>
> The total amounts to $1,600 + $7,000 = $8,600 and licence fees of $12,900.
>
> Licence fee is one and a half times the value of the artworks.

Bearing in mind that only 350 copies of calendars are involved, a licence fee of one and a half times the value is more than reasonable. I see no reason why the rate should be any different due to the different artform. I therefore allow the defendant's appeal and award the plaintiff the sum of $22,500 by way of loss of licence fee. This sum is to carry interest at 6% per annum from the date of filing of the writ.

I dismiss the plaintiff's cross-appeals. The defendant is awarded costs of the appeal.

Appeal allowed; cross-appeals dismissed.

Solicitors: *Rodyk & Davidson; Sim Hill Tan & Wong.*

Reported by *Azra Moiz*

Kawakami (S) Pte Ltd v Fudo Construction Co Ltd

HIGH COURT (SINGAPORE) — ORIGINATING SUMMONS NO 162 OF 1990
CHAN SEK KEONG J
26 NOVEMBER 1990

Civil Procedure — Order of court — Application to vary previous court orders — Whether order was a nullity or ambiguous — Rules of the Supreme Court 1970, O 24 r 2(5)

This was an application by the claimants under O 24 r 17 of the Rules of the Supreme Court 1970 for either a revocation or a variation of two previous court orders. The first was an order to both parties to exchange their bundles of documents within 14 days. The second order ordered the claimants to serve their bundles of documents within 21 days or have their action dismissed. The claimants claimed that the first order was either a nullity or that it was ambiguous, and that the second order was ultra vires as the first order was a nullity.

Held, dismissing the claimants' application:

(1) The first order was not a nullity since it was made within the jurisdiction of the court. Neither was it ambiguous since it was clear that it had to be read sensibly to refer to all documents connected with the dispute.

(2) The second order was made to enforce the first order as the claimants had been dilatory about compliance with the first order. The application was thus dismissed.

[*Editorial Note*: The claimants have appealed to the Court of Appeal vide Civil Appeal No 103 of 1990.]

Legislation referred to
Rules of the Supreme Court 1970 O 24 rr 2(5),3(1), 16(1),17

Low Tiang Hock for the claimants.
Tan Yeow Choo (Ms) for the respondents.

Cur Adv Vult

Chan Sek Keong J: This was an application by the claimants under O 24 r 17 of the Rules of the Supreme Court 1970 for revocation and/or variation of two interlocutory orders of court. The said rule provides as follows:

> Any order made under this Order (including an order made on appeal) may, on sufficient cause being shown. be revoked or varied by a subsequent order or direction of the Court made or given at or before the trial of the cause or matter in connection with which the original order was made.

The orders of court were the order of Lai Kew Chai J made on 16 March 1990 ('the first order') and the order of Yong Pung How J made on 27 July 1990 ('the second order'). The first order ordered as follows:

> (1) the parties exchange the bundles of documents within 14 days from the date of order made hereof;
> (2) there be inspection of documents within 28 days from the date of order made hereof; and
> (3) the costs of this application be referred to the arbitrator for his decision.